Supreme Court, U. S.
FILED
APR 7 1979
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

JOHN P. PARIS,

Petitioner

v.

LAWRENCE E. COOPER, et al.,

Respondents

Case No. 78-1213

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION
AND APPENDIX

GARY P. SAMS, ESQUIRE
MAHONEY HADLOW & ADAMS
Post Office Box 5617
Tallahassee, Florida 32301

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

JOHN P. PARIS,

Petitioner,

v.

LAWRENCE E. COOPER, et al.,

Respondents.

Case No. 78-1213

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION

AND APPENDIX

INDEX

	Page Number
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Constitutional Provision	3
State Statutory Provision	3
Statement of the Case	3
A The Proceedings Below	4
B The Facts	10
Argument	18
I Jurisdiction	18
II The Merits	23
Conclusion	27
Certificate of Service	29
Appendix	

CITATIONS

Cases: — Page Number

Amalgamated Food Employees Union v. Logan Valley Plaza, 391 US 308 (1968) 22

Beck v. Washington, 369 US 541 (1962) 22

First Equity Corp. of Fla. v. Riverside Real Estate Investment Trust, 307 So. 2d 866 (Fla. DCA 1975) . . 6

Hanson v. Denckla, 357 US 235 25

International Hod Carriers v. Heftler Construction Co., . . . 112 So. 2d 848, 851-52 (Fla. 1957) 19, 22

Roberts v. State, 181 So. 2d 646 (Fla. 1966) 19

Shaffer v. Heitner, 433 US 186 (1977) 25, 26

Statutes:

28 USC §1257(3)(1970) 2, 18

Fla. Stat. § 475.41 6

Fla. Stat. § 475.42 6

Fla. Stat. § 475.43 6

Fla. Stat. § 475.48 . . . . . 6, 26

Fla. Stat. § 48.193. 3

Federal Constitution

US Const. amend. XIV § 1 3

Florida Constitution

Article V, § 3(b)(3) Fla. Const. 10

OPINIONS BELOW

The opinion and order of the Florida Circuit Court (App. D of Petition) is unreported. The unanimous opinion of the Florida First District Court of Appeal affirming the Circuit Court (App. H of Petition) is reported at 352 So. 2d 534 (Fla. DCA 1978). The order of the Supreme Court of Florida denying the Petition for Writ of Certiorari to the District Court of Appeal (App. K of Petition) is unreported.

JURISDICTION

Petitioner contends that this Court has jurisdiction pursuant to 28 U.S.C. § 1271(3) (1970). As Respondent will demonstrate in Section I of his argument, Petitioner failed to preserve his constitutional claims in the

Florida appellate courts. This Court accordingly lacks certiorari jurisdiction over the federal constitutional claims asserted in the Petition.

QUESTIONS PRESENTED

I

Jurisdiction

Whether the Court has jurisdiction to review the federal constitutional claims asserted in the Petition pursuant to 28 U.S.C. § 1257(3)(1970).

II

The Merits

Whether, in the event the Court finds that it has jurisdiction to consider Petitioner's constitutional claims, the State of Florida's exercise of jurisdiction over the person of Petitioner was consistent with the due process clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISION

To the extent that the Court may properly review the constitutional claims asserted, the due process clause of the Fourteenth Amendment is implicated, and is set forth in the Petition at pp. 6-7.

STATE STATUTORY PROVISION

Florida's "long-arm jurisdiction statute", Florida Statutes, 48.193, pursuant to which jurisdiction over the person of Petitioner was asserted, is set forth in Appendix O of the Petition.

STATEMENT OF THE CASE

Respondent sets forth the salient facts of this case, and its procedural history, because of inaccuracies in

the Petition[1].

A. The Proceedings Below

The proceedings in the lower court began in January 1976 when Respondent ("Cooper") brought suit against Petitioner ("Paris") in the Circuit Court for Gulf County, Florida. (App. of Pet. A) At the time of the suit Paris was a Georgia resident (App. of Pet. C, at 3-4).

In mid-1973 Paris had acted as Cooper's real estate broker in the acquisition of a large tract of real property in Gulf County, Florida, and

[1] Reference to Petitioner's Appendix will be indicated by the letters "App. of Pet.", followed by the section and page; e.g., (App. of Pet O at 2-3). References to Respondent's Appendix will be indicated by the letters "App. of Respond.", followed by the section and page, e.g. (App. of Respond. at 2-3).

had received a cash payment and two promissory notes as compensation for his services. (App. of Pet. C and G, at 1-13) Cooper's 1976 complaint sought cancellation and recission of these two notes and restitution of the money he had paid to Paris (App. of Pet. A) Cooper's action was founded on the theory that Paris was not entitled to compensation because he was not licensed to act as a real estate broker by the State of Florida, where the property was located and where the majority of the negotiations for the purchase of the property took place. (Id.) Under the Florida Real Estate License Law, Florida Statutes, Chapter 475 (1977), it is unlawful for a person not licensed as a broker or salesman to seek or obtain compensation

for real estate brokerage services[2].

Paris initially moved to dismiss the complaint for lack of personal jurisdiction. (App. of Pet. B) The Circuit Court denied the motion. (App. of Pet. D) Paris then filed an answer (App. of Respond. E) and a counterclaim (App. of Respond. E) seeking to enforce the notes in dispute and and to foreclose a partial assignment of mortgage given to secure payment of the larger of the two notes.

Cooper's action against Paris was still pending when the holders of the purchase money mortgage given by Cooper when he purchased the Gulf

[2]Fla. Stat. §§ 475.41-475.43, 475.48 (1977). See generally First Equity Corp. of Fla. v. Riverside Real Estate Investment Trust 307 So. 2d 866 (Fla. DCA 1975).

County property brought an action to foreclose their mortgage, naming both Cooper and Paris as defendants. Paris and Cooper each cross-claimed against the other seeking relief identical to that which they were seeking in the action originally brought by Cooper (Pet. Writ of Cert. at 10-11).

The two cases were subsequently consolidated and set for hearing before the Circuit Court on cross-motions for summary judgment filed by Cooper and Paris. (App. of Pet. G) The Circuit Court entered summary judgment for Cooper on his claim for rescission of the notes and denied summary judgment on his claim for restitution. (Id.) The Circuit Court's Order granting summary judgment on the question of rescission was predicated on the theory that Paris's extensive activities in

Florida in connection with the acquisition of the Gulf County property constituted the performance of real estate brokerage services as a matter of law. (Id. at 9-10) The Court also held that because Paris was not licensed by the State of Florida the notes given by Cooper as compensation for Paris's services were void. (Id.)

After motions for rehearing were denied, Paris instituted an interlocutory appeal of the trial court's order to the District Court of Appeal. Paris did not assert his argument that the Circuit Court lacked jurisdiction in either his assignment of errors or his brief. (App. of Pet. VI; App. of Respond.C) The Court of Appeal affirmed the Circuit Court. (App. of Pet. H) Raising only the state law questions addressed by Paris's appeal, the Court

of Appeal concluded that the "services provided by Paris clearly fall within the provisions of Section 475.01(2), Florida Statutes, as being duties to be performed by real estate brokers or salesmen." 352 So. 2d at 535. Contracts to pay real estate commissions to unlicensed persons, the Court reasoned, were void as a matter of law and it therefore followed that the two promissory notes held by Paris were not enforceable and were properly cancelled by the Circuit Court. (Id.)

Paris sought certiorari to the Supreme Court of Florida (App. of Pet. K), invoking that Court's discretionary jurisdiction to review the decision of a Court of Appeal that is in direct conflict with the decision of another Court of Appeal or the Supreme

Court[3]. (App. of Respond.) Again Paris did not raise his claim that the Court lacked personal jurisdiction. The Supreme Court entered an Order denying the Petition, "it appearing to the Court that it is without jurisdiction. . . ." (App. of Pet. K) After an unsuccessful attempt to obtain a rehearing in the Florida Supreme Court, (App. of Pet. L and M) Paris filed the Petition for Writ of Certiorari now under consideration.

B. The Facts

In the summer of 1973 Paris

[3]Art. V. §3(b)(3), Fla. Const. provides that the Supreme Court" "(3) May review by certiorari any decision of a district court of appeal. . .that is in direct conflict with a decision of any district court of appeal or of the supreme court on the same question of law. . . ."

learned through a conversation with another Georgia realtor, Boling, that a large tract of real property in Gulf County, Florida was for sale. (App. of Pet. G at 2, C at 5, 6) Boling had received this information from William Grimsley, a Florida realtor who was a partner in Hilton & Associates, the owner of the property (Id.) Boling gave Paris a copy of an appraisal and a geological survey of the property. (Id.)

In July of the same year Paris contacted Grimsley by telephone and asked Grimsley a number of questions about the property. (App. of Pet. G at 3-4, C at 7) Through a series of telephone conversations Paris and Grimsley tentatively agreed for Paris to come to Florida to personally inspect the property. (Id.)

In August 1973 Paris contacted Cooper and informed him that he knew of a parcel of property in Florida which appeared to be a good investment. (App. of Pet. G at 4) Cooper indicated an interest in the property and authorized Paris to inquire further on his behalf. (Id.)

In early September 1973 Paris travelled to Panama City, Florida, where he met Grimsley (App. of Pet. at G-4) The two discussed Grimsley's asking price and a number of specifics about the property. (Id.) Grimsley told Paris that the price quoted included an allocation of 10% for a broker's commission (Id.) Paris informed Grimsley that he was not registered as a Florida broker and that he was acting on behalf of Cooper, a prospective purchaser. Grimsley and

Paris then travelled by automobile to the Gulf County property. Paris spent at least three hours inspecting the property, locating the survey lines, examining the boundary lines on the Gulf front, taking a number of pictures and generally familiarizing himself with the physical layout of the entire parcel. (Id.)

Paris then returned to Atlanta, discussed the proposed purchase and recommended a purchase price. (App. of Pet. G at 5) With Cooper's authorization, Paris prepared a written offer of purchase, which was submitted by Paris to Grimsley. (Id.) Grimsley indicated a willingness to accept the price offered. (App. of Pet. G at 5) Cooper then contacted attorneys in Atlanta, Georgia to prepare a formal written sales contract. (Id.) Paris worked

with Cooper's attorneys, obtaining information they desired and looking after details requested by them. (Id.)

In mid-September 1973 Paris telephoned Grimsley and arranged a meeting in Panama City with Grimsley and the other partners in Hilton & Associates. (App. of Pet. G at 5-6, C at 9) Paris attended this meeting as arranged and presented the sales contract. (Id.) A series of negotiations followed, with Grimsley, Paris and Cooper's attorneys communicating with one another frequently. (App. of Pet. G at 6) At no time during these negotiations did any of the sellers discuss the matter with Cooper, nor, indeed, did Cooper ever inspect the property. (Id.)

After Paris, Cooper's attorneys, and the sellers had agreed upon the terms of the contract, Paris took the

final draft to Panama City for the sellers' signatures. (Id.) The contract was signed and Paris returned to Atlanta.

The contract was modified a number of times prior to closing. (App. of Pet. G at 7) One such modification dealt with the way in which Paris was to be paid his commission. (Id.) The contract as executed provided for a fee of $315,070.00 to be paid by Cooper. (Id.) The form of payment specified was $100,000.00 cash at closing and the balance to be paid by a promissory note from Cooper to Paris, secured by a junior mortgage on the property. (Id.) In what was unquestionably an effort to avoid the consequences of the Florida Real Estate License Law, Florida Statutes, Chapter 475, Paris had the commission provi-

sions of the contract modified by separate letter agreement, as follows: the $215,070.00 note would be given by Cooper to Hilton & Associates, which would then endorse the note without recourse to Paris, payment being secured by the same purchase money mortgage given by Cooper to the sellers. (Id.) This note was made enforceable only by foreclosure against the property.

In accordance with the modification agreement, Paris received Cooper's $215,070.00 note from Hilton & Associates and a separate check from Cooper in the amount of $100,000.00. (App. of Pet. G at 8) By prior agreement, Paris returned this check to Cooper a few days after closing, and Cooper gave Paris $25,000.00 in cash and a demand note for $75,000.00. (Id.)

The closing was held in Panama City, Florida. Paris was present but Cooper chose not to attend, sending instead an agent with power of attorney to execute the remaining documents. (App. of Pet. G at 9) Cooper executed the two notes in favor of Paris and the mortgage in Atlanta prior to the closing. (Id.)

Paris declared Cooper in default on the two promissory notes in 1975.

ARGUMENT

I. Jurisdiction

Reduced to its essence, Petitioner's constitutional claim is that his contacts with the State of Florida in connection with Cooper's purchase of the Florida property were not sufficient, under the standards implicit in the due process clause of the Fourteenth Amendment, to justify requiring him to defend Cooper's recission action in the Circuit Court for Gulf County, Florida. An analysis of the appendices of the parties and the briefs filed by Paris in the State courts demonstrate that Paris did not preserve this jurisdictional question in the Florida appellate courts. This Court accordingly lacks jurisdiction under 28 USC §1257(3)(1970).

Paris first raised his jurisdic-

tional claim by motion to dismiss the complaint. (App. of Pet B) This motion was denied by the trial court, as was Paris's motion for reconsideration. (App. of Pet. C and D) Under Florida procedures Paris did all that was necessary at the time in order to preserve his jurisdictional argument for appellate review.

Once Paris lodged an appeal to the District Court of Appeal, however, it was necessary to articulate his jurisdictional claim again in order to preserve the record. See generally Roberts v. State, 181 So. 2d 646 (Fla. 1966); International Hod Carriers v. Heftler Construction Co., 112 So. 2d 848, 851-52 (Fla. 1957). He plainly failed to do so. This is demonstrated by an analysis of the assignments of error filed with the Court of Appeal.

(App. of Respond. C) At no point in the assignment of errors did Paris assert that the trial court erred in denying his motion for lack of jurisdiction. (Id.) Neither did he assert his jurisdictional claim in his brief to the Court of Appeal, or in his motion for rehearing. (App. of Pet. V and I; Appellant's brief lodged with Clerk)

Paris similarly overlooked his jurisdictional claim in his petition for writ of certiorari to the Florida Supreme Court (App. of Respond. D) and in his brief in support thereof. Paris did raise a constitutional claim in the Supreme Court (See brief of Petitioner in support of Petition for Writ of Certiorari to the Florida Supreme Court, lodged with the Clerk.), but that claim was predicated upon the equal protection clause, and the argu-

ment asserted was not that the Circuit Court lacked in personam jurisdiction but that the Circuit Court's ruling discriminated against him as a non-resident. Paris's petition and brief utterly failed to assert his jurisdictional claim. Paris's argument to the Supreme Court of Florida was devoted almost exclusively to state law issues. Indeed, he did not even bother to assert that the Supreme Court had appellate jurisdiction -- as opposed to certiorari jurisdiction -- on the permissible ground that the state court had, in ruling upon his motion to dismiss, construed a provision of the federal constitution.

It is submitted that Paris's failure to articulate his jurisdictional question in either the District Court of Appeal or the Florida Supreme

Court forecloses any review of this question by this Court. Amalgamated Food Employees Union v. Logan Valley Plaza, 391 US 308, 313, n.6 (1968); Beck v. Washington, 369 US 541, 553 (1962). Paris must be deemed to have waived the federal issue which he now seeks to have reviewed in this Court[4].

---

[4]In International Hod Carriers v. Heftler Construction Co., 112 So. 2d 848, 851-52 the Supreme Court of Florida noted: "Before this Court will take jurisdiction of a case on the ground that a final judgment or decree has construed a controlling provision of the Florida or Federal Constitution, at least four procedural prerequisites must be established by the party affirmatively seeking to invoke our jurisdiction. They are:

1. The constitutional question must have been raised at the first opportunity,

2. The constitutional provision claimed to have been violated must have been designated specifically either by explicit reference to the article and section or by quotation of the provision,

II. The Merits

Cooper submits that even if the Court finds that there is federal question jurisdiction in this case, it is nevertheless clear that the state trial court correctly rejected Paris's jurisdictional claim and that this case is accordingly not worthy of review by this Court. Paris's contacts with the State of Florida in connection with his services as a real estate broker in violation of the Florida Real Estate Licensing Law were clearly sufficient to make Florida's

---

3. The facts showing the violation must have been stated, and

4. The constitutional question must have been preserved throughout for review. This requirement contemplates adequate coverage of the constitutional question in the appellate briefs." (Emphasis added).

assertion of in personam jurisdiction fair, just and reasonable.

Paris traveled to Florida on at least three occasions in connection with his brokerage activities. He engaged in numerous telephone conversations with the sellers aimed at furthering his efforts to effectuate a sale of the Gulf County property. Indeed, for the period of time during which the contract to purchase was under active consideration, Paris was in almost constant contact with the sellers. Moreover, Paris obtained an enforceable security interest in the Gulf County property by virtue of the partial assignment of mortgage given him by Hilton and Associates pursuant to the agreement among Cooper, Hilton and Associates and Paris.

It is clear that in engaging in these brokerage activities, Paris purposely availed himself ". . . of the privilege of conducting activities within the forum state. . ." Hanson v. Denckla, 357 U.S. 235, 253 (1958). And it is likewise clear that, in engaging in illegal brokerage activities, Paris had ample reason to expect to be hailed into a Florida court. Compare Shaffer v. Heitner, 433 U.S. 186, 216 (1977). Furthermore, by obtaining a security interest in the Gulf County property, it is fair to assume that Paris expected to benefit from Florida's protection of his interest, especially in view of the fact that Paris's agreement with Cooper expressly provided that his note was enforceable only by foreclosure against the Gulf County

property. Compare, e.g., Heitner, supra at 208-209.

Florida's interest in asserting jurisdiction over Paris, moreover, must be considered substantial. As the Court of Appeal and the Circuit Court held, Paris was engaging in brokerage activities clearly unlawful under the Florida Real Estate licensing Law. It requires little analysis to demonstrate that the State of Florida has a very substantial interest in insuring that those who engage in real estate brokerage activities secure a license from the appropriate regulatory agency. The State of Florida has attached sufficient importance to this requirement to make violation of it a crime. Fla. Stat. 475.48 (1977).

Cooper submits that under the facts of this case Florida's assertion of jurisdiction over Paris was consistent with the Due Process Clause of the Constitution.

CONCLUSION

It is respectfully submitted that Paris has wholly failed to sustain his burden of establishing under Rule 19 that there are special and important reasons why the writ should be granted. This Court does not have jurisdiction to consider Paris's sole constitutional claim. But even if this Court should find that it does have jurisdiction, it is clear that the decision below did not involve an important question of federal law which deserves to be settled by this

Court; nor has the Florida Supreme Court or the lower state courts decided a constitutional question in a way which will conflict with the decisions of the Supreme Court. The petition for Writ of Certiorari should be dismissed or in the alternative denied.

Respectfully submitted,

Gary P. Sams
Mahoney Hadlow & Adams
Post Office Box 5617
Tallahassee, Florida 32301
(904) 222-7500

Attorneys for Respondent
Lawrence E. Cooper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above has been mailed to Raymond A. Cunningham, Esquire, Cunningham & Clarke, 341 W. Ponce de Leon, Decatur, Georgia 30030.

This 6th day of April, 1979.

Gary P. Sams

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

JOHN P. PARIS,

Petitioner,

v.

LAWRENCE E. COOPER, et al.,

Respondents.

Case No. 78-1213

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF FLORIDA

APPENDIX TO BRIEF
FOR RESPONDENT IN OPPOSITION

APPENDIX

TABLE OF CONTENTS

Affidavit of Lawrence E. Cooper. . . . . A (1-4)

Affidavit of William C. Grimsley, Jr. . . . . B (1-3)

Appellant's Assignments of Errors . . . . . C (1-5)

Petition for Writ of Certiorari To The District Court of Appeal, First District. . . . . D (1-15)

Answer and Counterclaim of John P. Paris. . . . . E (1-13)

AFFIDAVIT

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

Before me, the undersigned authority, personally appeared LAWRENCE E. COOPER, who, by me being first duly sworn, deposes and says:

1. That he is the plaintiff in the above captioned litigation.

2. That he has read the complaint filed herein on his behalf, and the allegations therein are true and correct.

3. That he has personal knowledge of the matters hereinafter set forth.

4. That he agreed with the defendant herein for the defendant to act on his behalf as a real estate broker in the purchase of the real property located in Gulf County,

Florida, more specifically described in the complaint filed herein, and that at all times material hereto it was understood by and between plaintiff and defendant that plaintiff would pay to defendant for his services ten per cent of the total purchase price of the property as and for a real estate brokerage commission.

5. That attached hereto as composite Exhibit "A" are true and correct copies of correspondence received by plaintiff from defendant during the course of defendant's activities in directing and negotiating the sale and closing of the transaction which resulted in the sale of the real property to plaintiff.

6. That the promissory note

attached by copy to the complaint as Exhibit "F" was delivered to defendant by an agent of plaintiff at the closing of the sale of the real property to plaintiff, which closing was conducted in the State of Florida.

7. That in addition to the promissory note attached by copy to the complaint as Exhibit "F", plaintiff, through his duly authorized agent, delivered to defendant at the closing of the sale of this transaction in the State of Florida, a check in the amount of $100,000.00, and that subsequently plaintiff substituted for that $100,000.00 check the promissory note attached to the complaint by copy as Exhibit "E", in the principal amount of $75,000.00, together with a cash payment of $25,000.00, which amounts

represented additional compensation to defendant for real estate brokerage services rendered to plaintiff in the negotiation and sale of the property described in the complaint.

8. Further Affiant saith not.

AFFIDAVIT

STATE OF GEORGIA)
)
COUNTY OF COBB)

Before me, the undersigned authority, personally appears WILLIAM G. GRIMSLEY, JR., who by me being first duly sworn, deposes and says:

1. That he has personal knowledge of the matters hereinafter set forth.

2. That he is one of the partners in Hilton & Associates, a Florida partnership consisting of L. Charles Hilton, Jr., Charles E. Faircloth and William C. Grimsley, Jr.

3. That he participated for himself and on behalf of Hilton & Associates in the negotiation and sale from Hilton & Associates to Lawrence E. Cooper of the property

described on Exhibit "A" to the Complaint herein, which property is located in Gulf County, Florida.

4. That the Defendant, John P. Paris, doing business as Paris Properties, directed and brokered the negotiations between Hilton & Associates and Lawrence E. Cooper which resulted in the closing and sale of the aforementioned property from Hilton & Associates to Lawrence E. Cooper.

5. That although affiant is a registered Florida real estate broker, he at no time acted as a real estate broker in the sale of the above described property to Lawrence E. Cooper by Hilton & Associates, and he had no agreement to participate with John P. Paris for Paris Properties in the negotiation and sale of the

property or the collection of a real estate brokerage commission for that sale.

6. That to affiant's knowledge, John P. Paris was the sole real estate broker in the negotiation, closing and sale of the aforementioned property from Hilton & Associates to Lawrence E. Cooper.

7. Further affiant saith not.

IN THE CIRCUIT COURT,
FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

L. CHARLES HILTON, JR., et al.,

Plaintiffs,

CASE no. 76-135

vs.

LAWRENCE E. COOPER, et al.,

Defendants.

APPELLANT'S ASSIGNMENTS OF ERROR

COMES NOW the Appellant, JOHN P. PARIS, by and through his undersigned attorneys, and, in accordance with Rule 4.2, Fla. App. R., files this Assignments Of Error in the above-styled Interlocutory Appeal, and enumerates the errors as follows, to-wit:

A. The Trial Court erred in entering its Final Summary Judgment dated February 25, 1977, because the record before the Court reflected

that there were genuine issues of material fact.

B. The Trial Court erred . . . because said Final Summary Judgment reflects on its face that the Court considered certain facts which were, simply, not in evidence.

C. The Trial Court erred . . . because said Final Summary Judgment reflects on its face that the Court relied upon certain facts, the existence or non-existence of which are clearly contested questions, according to the evidence before the Court at this state of the proceedings.

D. The Trial Court erred . . . because said Final Summary Judgment fails to consider, not to say resolve, facts which are in dispute in the record at this point in time, and the undisputed establishment of same are

part of a necessary predicate for a Final Summary Judgment in favor of LAWRENCE E. COOPER.

E. The Trial Court erred . . . because it is contrary to the law of Florida regarding the "yardstick" by which a Summary Judgment is to be measured, since there are disputed issues of material fact.

F. The Trial Court erred . . . because said Final Summary Judgment is contrary to the law of Florida in that the Trial Court failed to strictly construe a penal statute.

G. The Trial Court erred . . . in that it is contrary to the law of Florida because the Trial Court has failed to properly apply Ch. 475, F.S. [the Florida Real Estate License Law], the purposes of which are to protect the public from untrained and

unsupervised real estate operators.

H. The Trial Court has erred . . . in that its Judgment is contrary to the facts and the law of Florida, because it has enabled LAWRENCE E. COOPER to gain unconscionable advantage by avoiding a just obligation which he had contracted to pay.

I. The Trial Court erred . . . in that it is contrary to the law of Florida, because it has applied the law of Florida in determining contract rights between JOHN P. PARIS and LAWRENCE E. COOPER, while the determinative law properly is the law of the state and that is the place of performance--in this case, the State of Georgia.

J. The Trial Court erred . . . and in entering its Order Denying

Motion for Rehearing dated March 30, 1977, in that there is additional evidence which was neither known to nor available to PARIS and his counsel copies of Affidavits regarding same having been submitted to the Trial Court with the Motion for Rehearing and the Supplement To Motion For Rehearing.

K. The Trial Court erred in entering its Order Denying Motion For Rehearing, dated March 30, 1977, in that it acted contrary to the Florida Rules of Civil Procedure, the available facts, and the law of Florida.

IN THE SUPREME COURT OF FLORIDA

JOHN P. PARIS,

Petitioner,

-vs-

L. CHARLES HILTON, JR., JOHN D. O'BRIEN and GEORGE DANIEL, Trustees; and LAWRENCE E. COOPER,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, JOHN P. PARIS, presents this, his Petition for a Writ of Certiorari and states:

1. Petitioner seeks to have reviewed an Opinion of the District Court of Appeal, First District, dated the 18th day of November, 1977, and filed in the records of said District Court (the Petition For

Rehearing having been denied on the 22nd day of December, 1977). (See Opinion at A-110-113).

2. This Petition is presented under and pursuant to Article 5, Section 3(b)(3), of the Florida Constitution, and Rule 2.1a.(5)(b) of the Florida Appellate Rules.

3. This Petition is accompanied by an Appendix, including the Opinion Petitioner seeks to have reviewed, and by a supporting Brief.

4. The following are the Facts of the case:

(A) This Cause commenced, back in 1976, as an apparently uncomplicated mortgage foreclosure on 4,501 acres in Gulf County, Florida (A-1).

(B) The mortgage in question

was executed in Atlanta, Georgia, on February 8, 1974, by an Atlanta physician, Lawrence E. Cooper; the mortgage secured two notes of equal dignity--one in the amount of $800,275.00 in favor of Hilton & Associates, and a second note in the amount of $215,070.00 that was assigned by Hilton & Associates to Petitioner, JOHN P. PARIS, an Atlanta real estate consultant and broker (A-2).

(C) The "Paris note" was payable in Atlanta (A-16).

(D) In 1975, Cooper defaulted on the annual payment to Hilton & Associates under the larger note, and also

defaulted on the annual payment to PARIS under the smaller note (A-2).

(E) In consequence, Hilton & Associates (L. Charles Hilton, Jr., John D. O'Brien and George Danile, Trustees --hereinafter Hilton) filed the mortgage foreclosure Complaint against Cooper, joining PARIS in the posture of a co-Defendant but specifically alleging that the PARIS note enjoyed equal dignity with the larger Hilton note (A-5).

(F) PARIS immediately filed a Crossclaim, to foreclose his portion of the mortgage and recover the money due under the smaller note (A-32).

(G) Cooper, answering the Crossclaim, alleged the invalidity of PARIS' note, on the basis that the note--though regular on its face--was actually a "real estate commission" obtained in a transaction to which the Florida Real Estate License Law (Ch. 475, F.S.) applied (A-54).

(H) Thereafter, as to the sole issue presented in the Crossclaim, PARIS filed a Motion For Summary Judgment (simply asserting the validity, as a matter of law, of his $215,070.00 note) (A-68), and Cooper also filed his Motion For Summary Judgment (asserting, contra, as a

matter of law, the invalidity of the PARIS note) (A-109).

(I) On February 25, 1977, the Trial Court entered its Final Summary Judgment, holding the PARIS note invalid as a matter of law (and therefore denying the PARIS Motion and granting the Cooper Motion) (A-114-120).

5. Accordingly, the Grounds for invoking the jurisdiction of the Supreme Court are as follows:

(A) The decision by the First District Court, affirming the Trial Court's Final Summary Judgment is in direct conflict with the decision of this Supreme Court in Goodman -vs- Olsen, 305 So2d

753 (1974);

(1) In Goodman, supra, this Court ruled that the validity of contracts is to be governed by the lex loci;

(2) In this case, the Trial Court below ruled to the contrary, refusing to apply the lex loci--under which the note is valid. See Tillman -vs- Gibson, 44 Ga. 440 (Ga. S.Ct. 1931).

(B) The decision by the First District Court, affirming the Trial Court's Final Summary Judgment, is in direct conflict with the decision of this Court in L. Maxy, Inc. -vs- Mayo, 139 So.

121 (1931);

(1) In Maxy, supra, this Court ruled that statutes penal in nature are to be strictly construed and never extended by implication;

(2) In this case, the Trial Court below rejected this legal principle, and extended the operation of Ch. 475, F.S., to invalidate a note signed by a Georgian, in Georgia, payable to a Georgian, in Georgia, on which no Florida documentary stamps were ever placed.

(C) The decision by the First District Court, affirming the Trial Court's Final Summary Judgment, is in direct conflict with the decisions of the Third District Court of Appeal in Geneva Investment, Ltd., et al. -vs- Trafalgar Developers, Ltd., 274 So2d 581 (1973), and Pokress -vs- Tisch Florida Properties, Inc., 153 So2d 346 (1963);

(1) In both Geneva Investment, supra, and Pokress, supra, the Third District Court held that Ch. 475 applied to real estate activities ". . . in this state. . .", following the very words of Ch. 475.01(2), F.S.;

(2) In this case, however, the Trial Court below ignored these words in Ch. 475, and applied the penal privisions of the Act to the Georgia promissory note.

(D) The decision by the First District Court, affirming the Trial Court's Final Summary Judgment, works a denial of the Equal Protection Guarantees provided by the Florida Constitution (Art.I, Sect. 2 and the U.S. Constitution (Amend. XIV, Sect. 1);

(1) These Constitutional guarantees insure that JOHN PARIS, though

not a Floridian, is entitled to enjoy the same legal status before the Florida Courts as a Floridian;

(2) In this case, however, the Trial Court below denied the validity of the PARIS note--while others who also have not been registered under Ch. 475 have prevailed; see Geneva Investments, supra; Pokress, supra; and Morgan -vs- Glassman, 285 So2d 673 (3rd.Dist. 1973).

(E) The decision by the First District Court, affirming the Trial Court's Final

Summary Judgment, works an improper taking of property proscribed by our Florida Constitution (Art. I, Sect. 2) and the U.S. Constitution (Art. XIV, Sect. 1);

(1) These Constitutional guarantees insure that JOHN PARIS, though a Georgian and not registered with the Florida Real Estate Commission, is entitled to possess and enjoy the honest fruits of his honest labors;

(2) In this case, however, the Trial Court below ignored this basic right, and ignored the admonition by this Court

that "...the rights in property are basic civil rights." Corn -vs- State, 322 So2d 4 at 7 (S.Ct. 1976).

6. In consequence, the decision of the District Court of Appeal, First District, which Petitioner PARIS seeks to have reviewed, is in direct conflict with the above-cited decisions of the District Court of Appeal, Third District, and of the Florida Supreme Court; and in the direct conflict with the above-cited guarantees of the Florida and U.S. Constitutions. Because of the reasons and authorities set forth herein and in Petitioner's Brief, it is believed that the decision hereby sought to be reviewed is erroneous.

WHEREFORE, Petitioner, JOHN PARIS,

respectfully requests this Court to grant a Writ of Certiorari, and to enter its Order quashing the decision hereby sought to be reviewed, finding:

(a) That the lex loci (of Georgia) should have been applied by the Trial Court in determining the validity of the Georgia note; and

(b) That Ch. 475, F.S., as a penal statute should be narrowly construed; and

(c) That Ch. 475, F.S., applies only to real estate transactions "...in this state ...; and

(d) That the guarantees of the Florida and U.S. Constitutions require that a Georgian who performs services for a fellow Georgian and receives

back a note payable in Georgia, is entitled to protect and preserve that note in any court anywhere in our United States--including Florida.

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff, CASE NO. 76-15

-vs-

JOHN P. PARIS, individually and doing business as PARIS PROPERTIES,

Defendant and Counterclaimant

-vs-

FIRST NATIONAL BANK OF CHICAGO, a foreign corporation,

Counter-Defendant.

A N S W E R

COMES NOW the Defendant, JOHN P. PARIS, individually and doing business as PARIS PROPERTIES, by and through his undersigned attorneys, and, subject to a continuing objection to jurisdiction, service of process, and sufficiency of service of process, answers the paragraphs in Plaintiff's

Complaint as follows, to-wit:

1. Denied;

2. It is admitted that Defendant, JOHN P. PARIS, is a resident of the State of Georgia, but the remaining allegations are denied;

COUNT I.

3. Denied;

4. Denied;

5. The allegation that the said Contract was entered into on September 15, 1973, is admitted, and the remaining allegations are denied;

6. Admitted;

7. Admitted;

8. Admitted;

9. The allegation that Plaintiff paid to Defendant the sum of $25,000.00 at closing is admitted, and the remaining allegations are denied;

10. Denied;

11. Denied;

12. The allegation that Plaintiff is not a licensed Florida Real Estate Broker is admitted, and the remaining allegations are denied;

13. Denied;

14. The allegation that Plaintiff submitted a letter of April 1, 1975, to Plaintiff, and that Plaintiff is in default on his notes to Defendant is admitted, and the remaining allegations are denied;

15. Denied;

COUNT II.

16. Denied except as above expressly admitted;

17. The allegation that Plaintiff has paid to Defendant the amount of $37,904.00 is admitted, and the remaining allegations are denied.

FIRST DEFENSE: Plaintiff is, by

his own conduct, estopped from asserting the relief requested in his Complaint, and from challenging the validity of the Promissory Notes in question; such conduct on the part of Plaintiff includes, but is not limited to, the payment of $12,904.00 to Defendant, representing accrued interest on a portion of the indebtedness in question, and the execution and submission of the letter of September 15, 1975, a copy of which is attached hereto as Answer Exhibit "A", acknowledging the debt in question.

SECOND DEFENSE: Plaintiff has, by his own conduct, waived any objections to the validity of the indebtednesses described in his Complaint filed herein; such conduct amounting to waiver by Plaintiff includes, but is not limited to, the payment towards

the indebtedness to Defendant of the amount of $12,904.00, and the submission of the letter to Defendant, a copy of which is attached hereto as Answer Exhibit "A".

THIRD DEFENSE: Plaintiff may not, and equitably should not, challenge the validity of the indebtedness described in Plaintiff's Complaint, because of his own delays in doing so, amounting to laches.

FOURTH DEFENSE: Plaintiff is barred from seeking the relief described in Plaintiff's Complaint, because of the Parole Evidence Rule.

FIFTH DEFENSE: Plaintiff, seeking an equitable form of relief in his Complaint filed herein, is barred by the doctrines of equity, including, but not limited to, the "clean hands doctrine."

WHEREFORE, Defendant respectfully prays that Plaintiff's Complaint be dismissed, that Plaintiff take nothing by it and go hence without day, and that a Judgment in favor of Defendant and against Plaintiff for Defendant's taxable costs be entered by this Court.

COUNTERCLAIM

COMES NOW the Counterclaimant, JOHN P. PARIS, by and through his undersigned attorneys, and, without waiving his objection to the jurisdiction, sufficiency of process and sufficiency of service of process but as required by the Order of this Court dated May 5, 1976, files this compulsory Counterclaim against the Counter-Defendants, LAWRENCE E. COOPER, M.D., and FIRST NATIONAL BANK OF CHICAGO, and alleges:

I. To evidence a just debt of $215,070.00, Counter-Defendant, LAWRENCE E. COOPER, M.D., under date of February 8, 1974, made, executed and delivered to Hilton And Associates his Promissory Note in said sum, secured by his Mortgage, encumbering real property in Gulf County, Florida, described in an attachment to said Mortgage; said Mortgage was recorded in Gulf County, Florida, Official Record Book 56 at Page 86, a copy of said Note and Mortgage being attached hereto and marked Counterclaimant's Exhibits "1" and "2", and by reference made a part hereof for all purposes.

II. The said LAWRENCE E. COOPER, M. D. agreed by the covenants of said Mortgage to pay annual installments as they became due, as described on the face of the aforesaid Promissory Note;

however, said Mortgage is now in default since Counter-Defendant has not made the payments required thereunder. By reason of said default in the installments due, Counterclaimant has exercised and does now again exercise his option to declare the entire balance now due and payable and to foreclose said Mortgage.

III. Counterclaimant is now the owner and holder of the Promissory Note in question, and the owner and holder of a portion of the aforesaid Mortgage in question by virtue of a Partial Assignment of Mortgage, and Counterclaimant is entitled to all sums due under said Promissory Note and to become due thereunder henceforth.

IV. In order to determine the changes in status of the title to

said property since the date of the Mortgage being foreclosed, and to ascertain the necessary and proper parties of this suit, it was necessary for the Counterclaimant to purchase a Partial Abstract, and Counterclaimant has incurred the costs of same which is secured by the lien of the Mortgage for which the Counter-Defendant is liable.

V. For the purpose of collection and foreclosure of said Mortgage, same has been placed in the hands of the undersigned attorneys and Counterclaimant has thereby incurred an obligation to pay said attorneys a reasonable fee for the services which the Counter-defendant, LAWRENCE E. COOPER, M.D., is liable for under the terms of the Mortgage and Note, said Counter-Defendant being the fee

simple owner of said real property.

VI. Subsequent to the execution and recording of the Mortgage being foreclosed herein, Counter-Defendant, LAWRENCE E. COOPER, M.D., executed another Mortgage encumbering the aforesaid property, dated 25 July 1975 in favor of First National Bank of Chicago, recorded in Gulf County, Florida, Official Record Book 62 at Page 399, in the amount of $1,009,500.00. Said Mortgage is junior to and inferior to the Mortgage being foreclosed herein by Counter-dlaimant.

VII. In addition, on February 12, 1974, to evidence an additional just debt of $75,000.00, Counter-Defendant made, executed and delivered an additional Promissory Note in the amount of $75,000.00, payable on

demand, together with any attorneys' fees and costs of collection. Counterclaimant has made demand upon Counter-Defendant for payment, and Counter-Defendant has declined and refused to pay; a copy of said Note is attached hereto as Counterclaim Exhibit "3".

WHEREFORE, Counterclaimant prays that Counterclaimant's aforesaid Mortgage be foreclosed and the property sold and the proceeds therefrom first applied to the costs of this suit and to Counterclaimant's attorneys' fees and then applied to the payment of the indebtedness secured by Counterclaimant's Mortgage and, if any of the proceeds then remain, that they be next distributed to the Counter-Defendant as his interest may appear.

It is further prayed that this Court will determine and adjudge that Counterclaimant's Mortgage is superior in time and priority to the aforesaid Mortgage held by First National Bank of Chicago, and any and all persons or corporations or joint ventures claiming through it.

It is further prayed that if a deficiency is found to exist in the repayment by Counter-Defendant to Counterclaimant of the indebtedness being foreclosed herein, that Judgment for same be entered against Counter-Defendant.

It is further prayed that Counterclaimant be awarded a Judgment against Counter-Defendant upon the $75,000.00 Promissory Note, in said principal amount, together with interest at 6% per annum from date and

attorneys' fees and costs as provided in said Note.